



FOHRID HUMAN मानव अधिकार तथा प्रजातान्त्रिक मञ्च RIGHTS AND DEMOCRATIC FORUM

NATIONAL PROTECTION WORKING GROUP (NPWG)

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Brief report of "Challenges of human rights in Nepal" 11 December 2011 (2068 Mangsir 25) Jawlakhel, Lalitpur

Organizers: FOHRID, ICJ, HURFON and Citizen's Task Force to Combat Impunity¹

Background:

The Interim Constitution of Nepal and other political agreements including 12 point agreement, Comprehensive Peace Accord have expressed clear commitment to promote and protect human rights. However, there are still many challenges in the human rights sector as rule of law has become fragile and impunity is increasing day by day. The government is attempting to provide amnesty to the perpetrators of the past without addressing the grievances and plea for justice of the victims. The legislature parliament is preparing to pass the



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¹ **Citizen's Task Force to Combat Impunity (CTFCI)** is a loose network to promote public awareness at national level on the role of International Criminal Court (ICC) and pressurizing Government of Nepal to accede to Rome Statute of ICC for prevention of impunity strengthening transitional justice initiative and rule of law. Organizations involved in this network are - 1. Human Rights and Democratic Forum (FOHRID); 2. Informal Sector Service Centre (INSEC); 3. AI Nepal; 4. National Coalition for ICC; 5. Forum for Protection of Human Rights (FOPHUR); 6. Centre for Victims of Torture (CVICT); 7. Child Workers in Nepal Concerned Centre (CWIN); 8. Injured International; 9. Campaign for Human Rights and Social Transformation (CAHURAST), Nepal; 10. Joint Forum for Human Rights; 11. AJAR Nepal; 12. National Human Rights Foundation (HURFON); 13. Women Foundation; 14. Advocacy Forum; 15. Women Rehabilitation Centre (WOREC); 16. Shakti Samuha; 17. Youth Action Nepal; 18. Blue Diamond Society (BDS); 19. COCAP; 20. Today's Youth; 21. ICPD; 22. Campaign for Human Development and Peace (HUDEP); 23. IHRICON; 24. Legal Aid and Counselling Centre (LACC); 25. LANCAW-Nepal; 26. Disabled Human Rights Centre (DHRC); 27. Elders Nepal; 28. Conflict Study Centre; 29. Environment and Justice Society (ENJUS); 30. Campaign for Human Rights and Humanitarian Law; 31. Rural Self-reliance Service Centre; 32. National Land Rights Concern Group; 33. Civil Society for Peace and Development; 34. Centre for Legal Study (CLS); 35. Kanooni Rajya Prabardhan Samaj; 36. Development Forum; and 37. Rural Self-reliance Development Centre (RSDC). 38. [Nepal Disabled Women Association \(NDWA\)](#) **Organizations expressing solidarity to the Citizen Task Force to Combat Impunity**- 1. Human Rights Home (HRH); 2. Pro-Public; 3. Nepal Chepang Association; 4. Social Development Forum; 5. National Dalit Federation – Nepal; 6. GAESO; 7. International Law Forum – Nepal; 8. Ex-Army Council; 10. Drinking Water and Sanitation User's Federation; 11. Law Associates; 12. Swatantra Jeevan Kendra; 13. Nepalese Society of Victimology (NESOV); 14. National Human Rights Concern Center (NHRCC); 15. Forum for Women, Law and Development (FWLD); 16. Civil Peace Committee; and 17. K & K College

bills of Truth and Reconciliation Commission (TRC) and Commission for Investigation of Disappearance (CoID). But, one cannot be sure that these commissions shall work effectively even if they are formed. In this backdrop, human rights and civil society has felt a need to review the challenges of human rights in Nepal. On occasion of 63rd International Human Rights Day and Human Rights National Magna Meet 2011, FOHRID, ICJ, HURFON, and Citizen's Task Force to Combat Impunity organized this talk program.

Program proceedings and participation

In this program organized in the interaction model, Advocate Raj Kumar Siwakoti presented his paper entitled "Challenges of human rights protection in Nepal and common strategic action plan against impunity". Similarly, representatives from ICJ and OHCHR Nepal as well as senior human rights defenders delivered their speech. Floor was opened for discussion after the speech of the dignitaries. Representatives of political parties, human rights and civil society, international community and journalists actively participated the program. The program was chaired by senior human rights defender Nutan Thapaliya and run as Moderator by FOHRID President Birendra Thapaliya.

Objective

To conduct discussion among stakeholders about challenges of human rights protection in Nepal and to determine strategic action plan against impunity.

Conclusion

1. Several problems and hurdles have been seen in the efforts to prosecute perpetrators. We need victim centered policy, coordination and network, trust, protection of the witness, victim and lawyers, awareness for successful prosecution and litigation. The international donor agencies should focus their attention to this need. The Office of the Attorney General must play effective role to assist this. The government should be serious to effectively implement the recommendations of the National Human Rights Commission and the court decisions.
2. To respect and ensure rule of law, the problems hindering implementation of the Supreme Court decisions should be removed. There is lack of clarity at the policy level about the time limit to send the decision and process to follow for implementation. This problem can be removed through policy reform.
3. There is lack of policy uniformity among human rights and civil society in their struggle against impunity. We have failed to draw the attention of the international donor community to effectively intervene at the policy level. The campaign against impunity must be integrated as we cannot attain our goal being divided. The human rights and civil society needs to develop a common strategy and standard to cope up this problem.



Views expressed by speakers:

Tirtha Basaula, Advocate – Welcome remarks

We need not only law but the just and fair law. There is problem everywhere due to non-compliance with the law of the land. The government should respect the principles of rule of law. All the parties concerned must be serious about it.

Advocate Raj Kumar Siwakoti, Secretary General, FOHRID – Presentation of paper entitled "Challenges of human rights protection in Nepal and common strategic action plan against impunity"

It is impossible to bring the perpetrators under justice system till we defeat impunity. Ending impunity is the prerequisite for protection and promotion of human rights. It is difficult to investigate, prosecute and take action against the perpetrators involved in the serious violation of human rights and humanitarian law as impunity has posed a challenge before the state and the criminal justice system. We could not file the perpetrators of the Jana Andolan I and II. Lack of political will power and inadequate legal framework are responsible for this. The existing criminal laws in Nepal are based on traditional criminal jurisprudence. There are provisions in the Muluki Ain and other laws to address the crimes committed at the individual level. But, there is no domestic legal provision to address the serious violation of human rights and humanitarian law committed by the state against individuals or citizens.

Considering the possibility of widespread violence, the ancient thinkers including Yagyabalkya suggested to avoid violence, speak truth, not to steal and keep the sensory organs pure. The ancient Economics of Kautilya, Dayabhaga, Manab Nyayashastra are regarded as source of law by the modern world.

The problem of impunity in Nepal is mainly related to the government, political level, political parties, law enforcement agencies as well as armed groups. Ending impunity is the responsibility of the government, ruling system, political leadership, law enforcement agencies and policy makers. However, they have not made any due consideration and efforts in this regard.

Human rights community in Nepal has been celebrating 10 December with due importance as Human Rights National Magna Meet for the last 3 years. To celebrate this year's Magna Meet, FOHRID, INSEC and ICJ jointly organized a workshop entitled "Impunity Strategy Review Meeting: Cases of Human Rights Violations" at Sauraha, Chitwan on 3 December 2011. This workshop reviewed the current activities and strategies of the human rights and civil society in Nepal and recommended strategies at three levels. Following strategies and action plan should be incorporated in the Declaration of the Human Rights National Magna Meet 2011:

4. **Prosecution and litigation against perpetrators involved in human rights violation:**
Several problems and hurdles have been seen in the efforts to prosecute perpetrators. Lack of victim centered concept, incomplete coordination and network, lack of trust, lack of protection of the witness, victim and lawyers, lack of awareness are the obstacles for successful prosecution and litigation. The international donor agencies have also not focused their attention to this sector. The Office of the Attorney General has not played effective role to assist this. The recommendations of the National Human Rights Commission and the court decisions are not implemented. Following strategies must be implemented to address these problems:
 - a. To prepare detailed manual for empowerment of human rights defenders and lawyers on prosecution and litigation and to conduct training based on it.
 - b. To empower and expand the Citizen's Task Force to Combat Impunity and Transitional Justice Advocacy Group.
 - c. Capacity building of human rights organizations, human rights defenders, civil society and journalists.
 - d. To work for policy and structural reform for protection of those who conduct advocacy against human rights violation including witness and victims.
 - e. To form litigation group and Rapid Response Team to timely raise the issues of human rights violation and to conduct advocacy and pleading and to make the legal aid agencies more effective.
 - f. To sensitize political parties and expert pressure on the issue of prosecution and litigation against perpetrators.

5. **Implementation and followup up of court decisions:** There are several problems hindering implementation of the Supreme Court decisions. There is lack of clarity at the policy level about the time limit to send the decision and process to follow for implementation. In light of these problems, following steps should be taken to implement Supreme Court decisions made against impunity:
- a. To make effective the process of speedy decisions and timely information to the concerned parties.
 - b. To discuss on the need to clearly mention about order and remedies in the decisions.
 - c. To conduct advocacy to make the decision implementation agency accountable.
 - d. To monitor agency responsible for decision implementation.
 - e. To set up a mechanism at the National Human Rights Commission to regularly monitor the issue.

Following common action plan is recommended to implement these strategies:

Compilation of court decisions.

- a. Research on the status of implementation of court decisions.
- b. File contempt of court case against concerned authority for not implementing the court decisions on time.
- c. Widely disseminate information through media about non implementation of court decisions.
- d. Set up mechanism to monitor implementation status of the recommendations of National Human Rights Commission.
- e. Legal and structural reform is necessary for implementation of Supreme Court decisions. The state should pay attention to strengthen decision implementation directorate, make separate legal provisions for decision implementation, update record of decisions waiting for implementation and to take action to resolve them within a set period of time, to make the decision implementation monitoring process effective and institutional coordination for decision implementation.

6. **Policy strategy for combating impunity:** There is lack of policy uniformity among human rights and civil society in their struggle against impunity. The campaign has been divided as they have failed to develop a common strategy and standard. We have failed to draw the attention of the international donor community to effectively intervene at the policy level. Therefore, the workshop recommends following policy and action to be forwarded:

- a. To form a technical working group against impunity at the national level and to empower the existing networks.
- b. To convince the donor community to cooperate in the struggle against impunity according to the national need.
- c. To be based on fact and be objective while conducting advocacy against human rights violation.
- d. To be clear on cases and incidents while going for media campaign.
- e. To implement declaration regarding human rights defenders.
- f. The roles of the human rights organizations including National Human Rights Commission and civil society organizations to ensure implementation of these policies have been identified below:
- g. The National Human Rights Commission should play coordination role.
- h. To make efforts to clarify government perspective against impunity.
- i. Capacity building of human rights defenders.
- j. Continuation of struggle against impunity and to form common concept, voice and standard against impunity among human rights organizations.
- k. To clarify the concept of stakeholders about international standard against impunity.
- l. The funding allocated by the donor agencies for Nepal should be provided to the Nepalese NGOs with priority and the grant should be spent in Nepal among Nepalese communities and organizations. This issue should be brought into discussion at the national level.

These strategies should be incorporated in the Declaration of the Magnameet and the future struggle of the human rights and civil society against impunity should be strengthened through these strategies.

Mr. Frederick Rawski, Country Representative, ICJ

The International Commission of Jurists has supported the work of lawyers, judges, human rights activists and victims of human rights violations since 2005. There is no doubt that during this time much has changed. There is now a broader, more inclusive and open debate on human rights issues - the question of impunity is on the front pages of the newspapers every day, and the concerns of Madhesi, Janajati, Dalit and others - though they have not been adequately addressed - are now at the center of that debate. The Supreme Court has developed a strong, though sometimes inconsistent, jurisprudence on human rights violations and taken a strong stand against impunity. The conflict victims themselves have organized across party lines and made their voices heard.

At the same time, we find ourselves fighting the same battles over and over again. With each change in government, the question of amnesties and withdrawals of so called 'political' cases arises again. And long awaited transitional justice institutions are in danger of being undermined by attempts to turn them into vehicles to amnesty political and military leaders. At a time when we are finally seeing progress on key peace process issues such as army integration, it has been particularly disturbing to see recent governments squander the good will of civil society and the international community by taking steps backward on the human rights front such as:

- The attempted pardon of Bal Krishna Dhungel,
- Appointments to ministerial positions of alleged perpetrators,
- Resistance to any meaningful reform of the Nepal Army, and,
- The non-renewal of the mandate of the OHCHR

The truth is that the international and national human rights community is ready and willing to support the government's efforts to move beyond political stalemate towards a new constitution and fresh elections. Acts such as pardons and amnesties for crimes that could amount to international law violations make it very difficult for us to provide such support.

This is why the Magna Meet and in particular the Strategy Session on 3 December summarized by Raj Kumar Siwakoti is so important. We not only need to re-commit to human rights principles and join together in solidarity - this is the easy part - but we also need to reflect, to take a close look at what we have done well and what we have done poorly as a human rights community.

It was a partnership of national and international human rights activists, diplomats and lawyers who in 2004 and 2005 proved so effective at reducing human rights abuses and hastening the end of the conflict. I am happy to be here today to support efforts to maintain that partnership. You can count on the support of the ICJ.

Mr. Terry Savage, OHCHR Nepal

I am currently here in Nepal to assist OHCHR on the issue of reparation for the victims of serious crimes in the country. The money provided to the victims in the name of compensation cannot compensate blood. Only compensation is not enough. The state should implement policies where the victims get total satisfaction. This was established by the UN General Assembly Resolution. We need to work more to address the crimes of torture, rape, extrajudicial killings, disappearance. The victims are crying for justice. We need to seek truth first, and the TRC and CoID can effectively work for that. The Nepalese people are patient but the inaction can lead to disastrous results. While forming these commissions, it should be done with consensus among political parties. But there should not be political appointment. The public should be directly involved in the

appointment process. Their reports must be made public. In Nepal, such reports are not made public, which compels one to suspect effectiveness of the commissions.

Mira Dhungana, Advocate

The challenges of human rights should not be viewed only in terms of the past insurgency. Impunity continues even in the post conflict situation. Incidents of violence against women are still found. There are still discriminatory provisions in several laws. Everyone is in the risk of being handicapped, where is the provision to protect them? Human rights has not incorporated women rights. Women are still regarded as second class citizens. A woman loses her respect once she goes to her husband's house after marriage. We can avoid this by initiating a new tradition where neither the men nor women have to go to the other's house after marriage. There are 33% women in the CA but not in other sectors. Women represent everywhere but they do not have any decisive role. The TRC bill is being passed very soon. It has regarded rape as a crime against humanity. But, it is a general crime in our law with statutory limitation of 35 days to lodge a complaint. There is only 2 months of imprisonment for inflicting torture against women in the name of witch. The women may be victimized repeatedly due to very minimum punishment in the violence against women. We need to establish a monitoring unit to monitor violence against women.



Charan Prasai, Founder Coordinator, Human Rights National Magnameet

Forgot stick after crossing the river is our challenge for protection and promotion of human rights. The people supported the political parties as they expressed commitment to fully respect human rights in the peace process in the Section 8 of 12 point agreement. Only the peace process with justice can sustain. Direct blanket amnesty can cause the repetition of conflict. When we talk about justice, some leaders blame that we want to disturb peace process, but peace without justice is the hurdle in the way of peace process. The human rights community is committed to the norms and values of human rights despite threats and illusions. During the past conflict, we were blamed to be Maoists and now the Maoist led government blame us for not helping them. We are ready to face such challenges for respect of human rights.

Baburam Giri, Chairman, CIRAN

OHCHR Nepal is leaving Nepal without completing its task. The civil society needs to exert pressure to keep it for a longer period.

Ranju Thakur, Advocate

We need to discuss about transitional justice in the current post conflict phase. Lets not talk only about the rights of women, children, dalit, Madhesi or Janajati only. Lets talk about human rights. We need to ensure civil and political as well as economic, social and cultural rights of people. All the sectors of people are victimized of grave



crimes. The government is not serious to ensure justice to the victims. The government is being indifferent towards transitional justice issues.

Prof. Kapil Shrestha, Coordinator, Human Rights National Magnameet-2011

The charm of democracy is decreasing due to lack of sensitivity towards human rights. Prime Minister has expressed lip service to human rights. The responsible leaders are behaving in an irresponsible way. Impunity is the most talked term now. The laws apply only to the commoners and not to the leaders. The thieves get protection and the saints are persecuted. We have to become helpless witness when the perpetrators have become Ministers and leaders. External vigilance is the price of liberty. We should not sleep, but keep on being awake. We told the government that it is not the time to send back OHCHR, but they did not listen to us. The government is revolutionary in speech but reactionary in practice.

Nutan Thapaliya, Convener, Citizen's Task Force to Combat Impunity

We are entangled between human rights and impunity. We need all civil, political, economic, social and cultural rights for social transformation. ESC rights are challenges to a nation like Nepal. These rights are limited by according to law in the Nepalese constitution. They have been ignored after arranging under fundamental rights. There is right to food security, but people are dying of hunger. We must be active to ratify OPT-ICESCR. This will enable us to claim rights. Impunity must be addressed according to human rights law. Amnesty to the perpetrators is possible only by the victims. They must be provided reparation. TRC must be formed for this. Nepal has the worst cases of impunity in the world. TRC has been practiced in South Africa. We all including Maoists brought OHCHR to Nepal. The organization is required in Nepal to learn from the international experience to succeed the peace process.

Further information, please contact:



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